

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREW R. LOPEZ,

Plaintiff,

vs.

D. PETERSON, *et al.*,

Defendants.

No. 2:98-cv-02111-JKS

ORDER UPON REMAND

At Docket No. 124 the Court, in ruling on Defendants' motion for a more definite statement, applied Federal Rule of Civil Procedure 16 to identify and narrow the issues presented by Plaintiff's Amended Complaint. The Court ordered the Defendants to respond to Plaintiff's Amended Complaint as construed by the Court. Thereafter, at Docket No. 227 the Court, in ruling on Defendants' motion to dismiss, dismissed the claims against defendants Babbich, Baughman, Diggs, Haas, Reyes, Selky, and Wright, with prejudice.

Plaintiff appealed the Orders at Dockets Nos. 124 and 227 to the U.S. Court of Appeals, which affirmed in part, vacated in part, and remanded the case to this Court with instructions. The Court of Appeals vacated that part of the Order at Docket No. 227 dismissing the complaint against defendants Babbich, Baughman, Diggs, Haas, Reyes, Selky, and Wright with prejudice, remanding with directions that this Court enter the dismissal of defendants Babbich, Baughman, Diggs, Haas, Reyes, Selky, and Wright, without prejudice. In all other respects, the Court of Appeals affirmed the Order at Docket No. 227. The Court of Appeals also vacated the Order at Docket 124 and directed this Court grant Plaintiff leave to amend.

The following guide is provided Plaintiff to follow in drafting his amended complaint:

1. The complaint must—
  - (a) comply with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice,
  - (b) be submitted on the form provided with this order,

- (c) bear the docket number assigned to this case, and
- (d) be clearly captioned "Second Amended Complaint";

3. Each alleged violation of a Constitutional right must be set forth as a separate cause of action and, for each defendant that it is alleged violated Plaintiff's right, in a separate paragraph name the defendant and describe how that person is personally involved in violating Plaintiff's right, *i.e.*, specify what act or omission of the defendant violated Plaintiff's right and when that act or omission occurred; and

4. If necessary, attach additional sheets.

**IT IS HEREBY ORDERED THAT:**

1. The Amended Complaint as against defendants Babbich, Baughman, Diggs, Haas, Reyes, Selky, and Wright, is DISMISSED, without prejudice, for failure of Plaintiff to exhaust his administrative remedies prior to filing his complaint;

2. The Amended Complaint at Docket No. 10 is DISMISSED, without prejudice, for failure to comply with Federal Rule of Civil Procedure 8(a);

3. Plaintiff is granted until **July 15, 2009**, to file his second amended complaint complying with this Order and consistent with the Orders of this Court entered June 11, 2003, at Docket No. 124 and June 24, 2005, at Docket No. 227, to the extent affirmed by the U.S. Court of Appeals for the Ninth Circuit; and

4. The Clerk of the Court is directed to send Plaintiff—

(a) the form to be used by a prisoner filing a civil rights action pursuant to 42 U.S.C. § 1983,

(b) a copy of the mandate of the U.S. Court of Appeals for the Ninth Circuit [Docket No. 304],

(c) a copy of the Stipulation of Voluntary Dismissal [Docket No. 292],

(d) a copy of the June 24, 2005, Order [Docket No. 227], and

(e) a copy of the June 11, 2003, Order [Docket No. 124].

Dated: May 28, 2009

\_\_\_\_\_  
/s/ James K. Singleton, Jr.  
JAMES K. SINGLETON, JR.  
United States District Judge